

Remarks/Arguments:

Claims 12-19 are pending in the present application. Review and reconsideration on the merits are respectfully requested in view of the following comments.

Claims 12 and 15-19 stand rejected under 35 U.S.C., §112, first paragraph, as failing to comply with the written description requirement. According to the Office action, examples 16-18 of the present application provide support for a mixture of 1,2-pentanediol, 1,2-hexanediol and 1,2-octanediol present at a total concentration of 60% (20% each) of an antimicrobial composition but does not show support for a mixture equaling 40 to 55% of the total composition. Applicants respectfully traverse this rejection for the following reasons.

The initial burden is on the Patent Office to establish a *prima facie* case that the claims fail to comply with 35 U.S.C. §112, first paragraph, by providing evidence why the specification does not “convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of *the invention*.” *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991) (emphasis in original). Literal support in the specification is not required. *In re Kaslow*, 707 F.2d 1366, 1375 (Fed. Cir. 1983). Applicants are not limited to the specific compositions illustrated in the examples, and claims may be broader than the specific embodiments disclosed in the specification. *In re Rasmussen*, 650 F.2d 1212, 1215 (CCPA 1981).

Applicants respectfully submit that the Office has failed to present sufficient evidence to support a *prima facie* case that the claims fail to comply with the written description requirement. The Office Action fails to present any evidence as to why a person skilled in the art would not recognize in the disclosure a description of the invention defined by the claims. Applicants respectfully submit that the disclosure of antimicrobial compositions containing equal parts of 1,2-pentanediol, 1,2-hexanediol and 1,2-octanediol is sufficient to show that applicants were in possession of antimicrobial compositions containing mixtures of the three specified diols without being limited to the specific ratios or total amount. One of ordinary skill in the art would immediately recognize that the ratios and total amount of the diols are unimportant to the overall

activity of the antimicrobial composition. One of ordinary skill in the art reading the specification as a whole would never consider the invention as being limited to the specific embodiments provided in the examples. The specification repeatedly refers to using 40 to 60% of a 1,2-diol, and there is no reason that this same range would not apply to the mixture of diols provided in examples 16-18. Likewise, one of ordinary skill in the art would never consider the invention as being limited to only those compositions having equal parts of the three recited diols. Limiting the claims of the present application to the embodiments shown in specific examples would deprive applicants of the full scope of their invention. Accordingly, applicants respectfully submit that the Office has failed to establish a *prima facie* case that the claims are not adequately supported by the specification and request that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that all of the pending claims are in condition for allowance and favorable action on the merits is requested. In the event that the Examiner wishes to discuss any aspect of this response, please contact William J. Davis at (973) 628-3529 or the undersigned at the telephone number indicated below. We hereby authorize the Commissioner under 37 C.F.R. § 1.136(a)(3) to treat any paper that is filed in this application which requires an extension of time as incorporating a request for such an extension. The Commissioner is authorized to charge any additional fees required or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted:

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By: /John F. Kane/
John F. Kane
Reg. No. 44,815

THOMPSON HINE LLP
2000 Courthouse Plaza N.E.
10 West Second Street
Dayton, Ohio 45402-1758
Telephone: (937) 443-6816
Facsimile: (937) 443-6635